IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.684 OF 1992

1.Smt.Gahubai Govind Chauhan
2.Manohar Govind Chauhan
3.Anna Raghunath Chauhan
4.Kum.Sangeeta Raghunath Chauhan ...Appellants

vs.

1. Dashrath Atmaram Patil
2. National Insurance Company Ltd.Thane ...Respondents

Mr.T.J.Mendon i/b Mr.A.A.Kudrolli for the Appellants
Mr.J.S.Chandnani for Respondent No.2.

CORAM: A.S.OKA,J.
DATE : JANUARY 16,2007.

ORAL JUDGMENT:

1. Heard learned Advocates for the Appellants and the learned Advocate for the second Respondent. The Appellants are the Applicants in a claim application No.110-A of the Motor Vehicles Act, 1939 claiming compensation of Rs.75,000/- on account of death of one Raghunath Chauhan. Later on the claim was enhanced to Rs.1,00,000/-.

2. The first Appellant is the mother of the deceased, the second Appellant is the brother of the deceased,the third Appellant is the son of the deceased and the fourth Appellant is the daughter of the deceased. According to the case of the Appellants, the deceased died in a motor accident on 27th June 1982 involving a truck owned by the Respondent No.1 which was validly insured with the Respondent No.2. The learned Member of the Motor Accident Claims Tribunal, Thane allowed the claim Application partly and made an Award in the sum of Rs.80,000/-

together with interest at the rate of 9% p.a. from the date of the Application till realization of the amount.

3. The submission of the learned Advocate for the Appellants is that the learned Member found that the income of the deceased was Rs.1,000/- per month. Notwithstanding the said finding, the Tribunal has proceeded on assumption that monthly income of the deceased was Rs.900/- per month. He submitted that the multiplier applied is on the lower side. He also submitted that usual amount for loss of love and affection ought to have been fixed at Rs.15,000/-. The learned Counsel for the second Respondent has supported the impugned Judgment and Award and pointed out that the evidence on record shows that the third Appellant has secured an employment. He submitted that considering the age of the first Appellant, the multiplier of 10 adopted by the Tribunal is just and proper. He submitted that the learned Member of the Tribunal is right in taking the income of the deceased at Rs.900/- per month.

4. I have considered the submissions. On the date of the filing of the Claim Petition the age of the third Appellant is shown as eight years and the fourth Appellant’s age was shown as six years. The first Appellant has admitted that the third Appellant is now working in a factory. She stated that the said Appellant did not go to the school. She stated that the daughter of the deceased was studying in IV standard. The deposition of the said witness was recorded on 8th January

1991. The fact that at such a tender age the son was forced to work is no ground to deny the compensation. If compensation was paid immediately after the accident, the son could have taken education.

5. In paragraph 8 of the Award, the learned Member of the Tribunal has held that monthly income of the deceased was not more than Rs.1000/-. However, while calculating the multiplicand, he has taken the income at the rate of Rs.900/- per month. In my view, the multiplicand ought to have been calculated on the income of Rs.1,000/- per month. It is pertinent to note that the learned Member of the Tribunal has not considered the prospects of future increase in the income. Out of Rs.1,000/- per month, a sum of Rs.350/- will have to be deducted on account of personal expenditure of the deceased. Thus, yearly dependency comes to Rs.7800/- (650 X 12). In a recent decision of the Apex Court, for the deceased of 35 years, multiplier of 13 has been taken. In the present case, the widow of the deceased was not alive on the date of the accident and the only dependants were two minor children and the mother of the deceased. Therefore, multiplier of 10 adopted by the learned Member of the Tribunal appears to be reasonable. Hence, the compensation will come to Rs.78,000/-. To that the usual amount of Rs.15,000/- on account of loss of love and affection etc. will have to be added. Thus, the total compensation payable will be Rs.93,000/-. Therefore, the impugned Award needs to be modified.

6. Hence, I pass the following order :

i) Appeal is partly allowed. Operative part of the impugned Judgment and Award is substituted by following:

". Dashrath Atmaram Patil, the owner and the National Insuance Company Ltd., the insurer, do jointly and severally pay to the Applicants Rs.93,000/- together with interest at the rate of 9% per annum from the date of application till realisation and the costs.

. The deficit Court fee on the excess Claim is allowed to be recovered from the Applicants."

ii) The decree/Award will be drawn by this Court only after deposit of the deficit court fee, if any, payable in the Appeal is made by the Appellants.

iii) Enhanced amount of compensation will be released to the Appellants only after the deficit court fee is paid on the original claim application.

iv) The Appellants will be entitled to proportionate costs of the claim application and this Appeal from the second Respondent.

v) Writ to be sent immediately.

JUDGE